SUPREME COURT OF THE UNITED STATES.

No. 295.

DECEMBER TERM, 1868.

JULIUS HORNTHALL AND ALEXANDER KUHN, PARTNERS, AS J. HORNTHALL & CO., APPELLANTS,

vs.

MARTIN KEARY, COLLECTOR OF INTERNAL REVENUE, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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1 JULIUS HORNTHALL AND ALEXANDER Kuhn, partners, under the firm name and style of J. Hornthall & Co., *vs.* MARTIN KEARY. } N. S. 56. In chancery.

Pleas before the Honorable Robert A. Hill, district judge of the United States, at a special term of the Circuit Court of the United States in and for the fifth circuit and southern district of Mississippi, held at the city of Jackson, in said district, on Monday, the 6th day of July, A. D. 1868, pursuant to an order of said Circuit Court made pursuant to law, at the regular May term of said court, in the year of our Lord eighteen hundred and sixty-eight, begun and held on the first Monday of May, A. D. 1868.

Be it remembered that heretofore, to wit, on the 13th day of May, A. D. 1868, the complainants, by their solicitors, Messrs. Brooke & Cook, filed their bill of complaint herein against Martin Keary, collector of internal revenue of the United States for the second collection district of the State of Mississippi, defendant, in the words and figures following, to wit:

Bill of complaint.

To the Honorable Robert A. Hill, judge of the Circuit Court
2 of the United States for the southern district of Mississippi:

The bill of complaint of Julius Hornthall and Alexander Kuhn, partners in trade, in the city of Vicksburg, State of Mississippi, under the firm name and style of J. Hornthall & Co., against Martin Keary, collector of internal revenue of the United States for the second collection district of the State of Mississippi, respectfully represents to your honor, that during the past winter they shipped from the port of said city of Vicksburg a large amount of cotton in bales, and among them several lots amounting, in the aggregate, to three hundred and forty-one bales, on all of which the internal revenue tax of two and one-half cents per pound was paid, and permits for the shipment of the same regularly obtained and sent forward with the same. The said tax, amounting to three thousand one hundred and fifty-seven dollars and twenty-three cents, on said three hundred and forty-one bales of cotton, was duly paid to said Keary, as collector as aforesaid, or to his legally authorized deputy, and permits for the same regularly issued by him. Your orators further state, that on the 9th May, instant, they were served with a notice (which is herewith filed, marked Exhibit A, and prayed to be taken as part of this bill) emanating from the office of said Keary, informing them that the said sum of thirty-one hundred and fifty-seven 23-100 dol-
3 lars was still unpaid, and that unless the same was paid within ten days from said date, together with five per centum damages and accrued interest, collection thereof would be enforced by distraint and sale of your orator's property; and said Keary,

through his deputy, J. J. Fitzpatrick, has threatened to levy on your orator's stock of goods and sell them, to pay the pretended debt aforesaid.

Your orators charge that the sole pretence for this high-handed and illegal threatened proceeding is, that the amounts so paid by them as aforesaid do not appear on said Keary's books—an omission for which your orators are in no way responsible, for your orators charge, that so negligently or fraudulently have said Keary's books and accounts been kept, that, as your orators are informed and believe, they exhibit anything but a true and honest performance of his dutirs as collector as aforesaid.

Your orators further state, that they are informed and believe, and so chage, that an agent or agents of the government have recently been engaged in examining into said Keary's accounts, and have found large deficits therein; and they further charge, that fraudulently and corruptly, for the purpose of relieving himself, he has fabricated the foregoing charge against your orators, though he well knows that said sum which he thus fraudulently seeks to col-
4 lect from your orators have long since been paid by them.

Your orators further state, said Keary has the permits on which said cotton was shipped in his own possession, so that your orators are unable to produce them as exhibits to this their bill of complaint.

Your orators further state and charge, that the acts of Congress, viz., of March, 1865, and July, 1866, under and by virtue of which said Keary, by his said deputy, threatens to proceed as aforesaid, against your orators, are not applicable to the cotton tax, but only to what is termed the annual tax, such as taxes on income, licenses, &c., as will be seen by reference to the terms of said acts, said cotton tax being a specific lien on the cotton, which cannot be removed from the district in which it is raised until the tax is paid or bond given for payment within ninety days. Your orators therefore charge that the threatened proceedings of said Keary is illegal and oppressive, and will result in great loss and damage to your orators. Your orators charge that they are without adequate remedy at law; that said Keary is wholly irresponsible, having no visible property in this State; that the closing of their store, as threatened by said Keary, would result in irremediable loss and mischief to them. They therefore, the premises being considered, pray that your honor will grant unto them the most gracious writ of injunction, enjoining and restraining said Keary and his agents and deputies from pro-
5 ceeding to enforce the collection of the aforesaid sum of money by distraint or otherwise, and that he be required to refrain and abstain from all interference with your your orators' property or business until further order of your honor; and on final hearing your orators pray that said injunction may be made perpetual. Your orators pray that said Martin Keary may be made defendant to this bill, and that subpœna may issue ordering him to appear and plead, answer or demur to the same; and your orators pray for such further

or other relief as to your honor shall seem equitable and just; and as in duty bound your orators will ever pray, &c.

BROOKE & COOK,
Sol's for Compl'ts.

STATE OF MISSISSIPPI, *City of Vicksburg, ss:*

Personally appeared before me, Laz. Lindsey, commissioner of the United States for the souhtern district of Mississippi, J. Hornthall and A. Kuhn, who having been by me duly sworn, states that the matters and things set forth and averred in the foregoing bill are true, so far as they purport to be on the personal knowledge of affiant, and so far as derived from others he believes them to be true.

J. HORNTHALL.
ALEX. KUHN.

Sworn to and subscribed before me, this 11th day of May, 1868.
[L. S.] LAZ. LINDSEY,
Commissioner.

6 *Exhibit A to bill.—General demand for taxes.*

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,
Second District, State of Mississippi,
Vicksburg, 9th May, 1868.

Decbr. List., 21 Div.

Messrs. J. Hornthall & Co., Vicksburg, Miss:

A tax under the excise laws of the United States, amounting to thirty-one hundred and fifty-seven $\frac{23}{100}$ dollars, being for int. rev. tax on three hundred and forty-one bales cotton, has been assessed against you, and transmitted to me by the assessor of this district. The same not having been paid within the time required by law, you became liable to pay five per centum additional upon the amount thereof, and interest at one per centum per month, from the first day of January, 1868; and demand is hereby made upon you for the said tax, with the additional five per centum and such interest as may accrue before payment. If not paid within ten days from the personal service or mailing hereof, it will become my duty to collect the same by distraint and sale of property.

Payment may be made to myself or deputy, at my office in Vicksburg.

MARTIN KEARY, *Collector,*
Pr. J. J. FITZPATRICK,
Deputy Collector.

Am't of tax	$3,157 23
Penalty	156 86
Total	$3,314 09

Bring this notice with you.

7 *Fiat for injunction.*

To the clerk of the Circuit Court of the United States for the southern district of Mississippi:

You will issue writs of subpœna and injunction as prayed for in the within bill, upon complainant entering into bond, in the penalty of four thousand dollars, with one or more good and sufficient sureties, to be approved by L. Lindsey, a commissioner of this court, conditioned for the payment of such damages as the defendant or the United States may sustain by the wrongful issuance of said injunction.

Given under my hand and seal this May 12th, 1868.

[SEAL.] ROBERT A. HILL, *Judge.*

And thereupon afterwards, to wit, on the said 13th day of May, A. D. 1868, the complainant filed with said bill an exhibit A their injunction bond, in the following words and figures, to wit:

Know all men by these presents, that we, Julius Hornthall and Alexander Kuhn, partners under the firm name of J. Hornthall & Co., principal, and Jos. Baysinsky and M. H. Blakemore sureties, are held and firmly bound unto Martin Keary, collector of the internal revenue of the United States for the second district of the State
8 of Mississippi, in the sum of four thousand dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, &c., firmly by these presents. Dated this 12th day of May, 1868.

The condition of the above obligation is such, that whereas the said J. Hornthall & Co. did, on the 12th day of May, inst., obtain from the Hon. R. A. Hill, judge of the district court of the United States for the southern district of Mississippi, an order for an injunction, enjoining and restraining the said Martin Keary, collector as aforesaid, from collecting by distraint or otherwise the sum of three thousand three hundred and fourteen dollars and nine cents, claimed by said Keary, as collector as aforesaid, from said J. Hornthall & Co., as due by them for taxes on three hundred and forty-one bales of cotton: Now, in the event of said injunction being dissolved, if the said J. Hornthall & Co. shall pay to the said Keary or the United States all damages sustained by him or them in consequence of the wrongful issuance of said injunction, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] J. HORNTHALL.
[SEAL.] ALEX. KUHN.
[SEAL.] JOS. BAYSINSKEY.
[SEAL.] M. H. BLAKEMORE.

Signed and acknowledged before me and approved by me this 12th May, 1868.

LAZ. LINDSEY,
Commissioner U. S. Circuit Court, South. Dist. of Miss.

9 And on the said 13th day of May, 1868, there was issued from the clerk's office of our Circuit Court the following subpœna, viz:

U. S. OF AMERICA, *Southern District of Mississippi, ss*:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon Martin Keary, collector of internal revenue of the United States for the second collection district of the State of Mississippi, citizen of the State of Mississippi, to be and appear before the Circuit Court of the United States for the southern district of Mississippi, at the city of Jackson, at Rules, to be holden in the clerk's office of said court, on the first Monday of July next, to answer a bill in equity exhibited against him by Julius Hornthall and Alexander Kuhn, partners under the name of J. Hornthall & Co., who are citizens of the State of Mississippi, and unless they shall enter their appearances therein in the clerk's office aforesaid on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same. Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the
10 United States, and the seal of our said Circuit Court, this 13th day of May, A. D. 1868, and in the 92d year of the Independence of the United States of America.

[L. S.] GEO. T. SWAN, *Clerk*.

Return.

U. S. MARSHAL'S OFFICE.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I hereby nominate and appoint S. McD. Vernon my special deputy to execute and return the within process according to law. Witness my hand and seal, this 13th day of May, 1868.

[SEAL.] R. H. WINTER,
U. S. Marshal southern district of Mississippi.

Served upon Martin Keary by reading the within to his chief clerk, J. J. Fitzpatrick, and leaving a true copy of the within at his office, this the 15th May, A. D. 1868.

[SEAL.] R. H. WINTER,
U. S. Marshal.
P'r S. McD. VERNON, *D'y.*

And on the same 13th day of May, 1868, there was also issued the following:

Writ of Injunction.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

The President of the United States of America to Martin Keary, collector of the Internal Revenue of the United States for the second collection district of the State of Mississippi, your
11 deputies, agents, &c., greeting:

Whereas Julius Hornthall and Alexander Kuhn, partners under the firm-name of Hornthall & Co., have filed their bill of complaint in the Circuit Court of the United States for the said district against you, praying injunction and relief touching the matters in said bill mentioned, and have obtained a fiat thereupon from the Hon. Rob't A. Hill, judge, &c.: Now, therefore, pursuant to the said order, you are hereby commanded and enjoined that you absolutely refrain from any and all attempts to collect by distress or otherwise from the said complainants the sum of thirty-three hundred and fourteen dollars and nine cents, claimed by you to be due from complainants as tax under the excise laws of the United States, and damages thereon upon certain three hundred and forty-one bales of cotton in said bill mentioned until the further order of our said court thereupon, and this you shall in no wise omit under the penalty of such consequences as may follow thereon.

Witness the honorable Salmon P. Chase, Chief Justice of the United States, and the seal of the said Circuit Court at Jackson, in said district, this 13th day of May, A. D. 1868.

[L. S.] GEO. T. SWANN, *Clerk.*

Return.

U. S. MARSHAL'S OFFICE.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

12 I hereby nominate and appoint S. McD. Vernon my special deputy to execute and return the within process according to law.

Witness my hand and seal this 13th day of May, 1868.

[SEAL.] R. H. WINTER,
U. S. Marshal southern district of Mississippi.

Served upon Martin Keary by reading the within to his chief clerk, J. J. Fitzpatrick, and leaving a true copy of the within at the revenue office of said Keary, this the 15th day of May, 1868.

R. H. WINTER,
U. S. Marshal,
P'r S. McD. VERNON, *D'y.*

And afterwards, to wit, on the first Monday and 6th day of July, A. D. 1868, being the first day of the special term of said court mentioned in the caption, the following motion was entered in said cause, to wit:

J. HORNTHALL & CO.
vs.
MARTIN KEARY, Collector of Int. Rev., &c. } N. S. 56

Motion by defendant to dissolve the injunction and dismiss the bill in this cause for want of equity, as appears therein, and because there is no authority or law to warrant the filing of such bill nor to obtain such injunction.

R. LEACHMAN,
13 *U. S. District Attorney for motion.*
BROOKE & COOK, *Contra.*

And afterwards, to wit, on the 8th day of July, A. D. 1868, being a day in the special term aforesaid of our said Circuit Court, the following order was made therein, viz:

J. HORNTHALL & CO.
vs.
MARTIN KEARY, Collector of Int. Rev., &c. } N. S. 56. In chancery.

This day came on to be heard the motion of the defendant by the district attorney of the United States for the southern district of Mississippi, to dissolve the injunction heretofore granted in this cause and to dismiss the complainants' bill, and the same being argued and submitted and the court sufficiently advised thereon, it is ordered by the court that said motion to dissolve the injunction be sustained, and that said injunction be and the same is hereby dissolved; but as to the motion to dismiss the complainants' bill herein, it is ordered that the same be overruled.

And afterwards, to wit, on the 10th day of July, A. D. 1868, the following demurrer was filed in said cause, to wit:

United States Circuit Court, special July term 1868, for the southern district of Mississippi.

JULIUS HORNTHALL & CO.
vs.
MARTIN KEARY, COLLECTOR OF INTERNAL REVENUE.

UNITED STATES OF AMERICA:

The said Martin Keary, collector of internal revenue for the second collection district of Mississippi, and defendant in the above-entitled cause, comes and says that the said bill of complaint and the

matters therein set forth are not sufficient in law to require him to answer thereto, and he therefore demurs to the same, and for causes of demurrer says:

1st. That said bill of complaint is not the proper remedy in this cause, the same being, if any, before the United States commissioner of internal revenue.

2d. That this court has no jurisdiction to retain or entertain a bill of injunction to restrain the collection of internal revenue tax.

Wherefore he prays that the said bill may be dismissed with costs.

R. LEACHMAN,
U. S. District Attorney, Sol. for Def't.

14 And on said demurrer is the following endorsement, viz:

The certificate of counsel and the oath required by rule 31 is hereby waived, and I agree that the case be set for hearing on demurrer and tried instanter.

W. BROOKE,
Sol. for Complainants.

And afterwards, to wit, on the 13th day of July, A. D. 1868, being a day in the special term aforesaid of our said court, the following decree was rendered in said cause, to wit:

J. HORNTHALL & Co.
vs.
MARTIN KEARY, COLLECTOR OF INTERNAL revenue, &c. } N. S. 56.—In chancery.

Be it remembered, that this cause came on to be heard this 13th day of July, 1868, before the honorable Robert A. Hill, judge, &c., upon the defendant's demurrer to complainants' bill; and the court having heard the argument of counsel, and having fully considered the matters arising thereon, and being satisfied that said demurrer is well taken, and that said bill should be dismissed, it is therefore ordered and decreed by the court that said demurrer be sustained, and complainants' bill dismissed. It is further ordered and decreed by the court that complainants pay the costs of this cause to be taxed for which execution may issue.

[SEAL.] ROBERT A. HILL, *Judge.*

16 And afterwards, to wit, on the 14th day of July, 1868, being a day in the special term of our said court, aforesaid, the following order was entered in our said court, to wit:

J. HORNTHALL & Co.
vs.
MARTIN KEARY, COLLECTOR OF INT. REVenue, &c. } N. S. 56.—In chancery.

Complainants, feeling themselves aggrieved by the decree of the court sustaining the demurrer and dismissing the bill, pray for an

appeal from the same to the next term of the Supreme Court, which is granted, to operate as a supersedeas, upon condition that complainants enter into bond within ten days from the date of said decree in the penal sum of six thousand five hundred dollars, with good and sufficient security, to be approved by the district judge, payable to the defendant, conditioned that the said appellants shall prosecute their appeal to effect, and answer all damages and costs if he fails to make said appeal good.

And afterwards, to wit, on the twentieth day of July, A. D. 1868, the appellants filed in the clerk's office of said Circuit Court their appeal bond in said cause, which, with the endorsement thereon, is in the following words and figures, viz:

17 Know all men by these presents, that we, Julius Hornthall and Alexander Kuhn, partners under the firm-name of J. Hornthall & Co., principals, and Jos. Baysinsky and Meyer Bodenheim, securities, are held and firmly bound unto Martin Keary, collector of internal revenue of the United States in the State of Mississippi, in the sum of six thousand five hundred dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, &c., firmly by these presents.

Sealed with our seals and dated this 17th day of July, 1868.

The condition of the above obligation is such that, whereas a decree was ordered and adjudged in the Circuit Court of the United States for the sourthern district of Miss. by hon. R. A. Hill, sitting in chancery, on the 13th day of July inst., in a certain cause therein pending, wherein said J. Hornthall & Co. were complainants, and said Martin Keary, collector, &c., defendant, by which said decree the demurrer of said defendant to the bill of complaint therein was sustained and said bill dismissed, and the injunction theretofore granted by his honor the judge aforesaid, dissolved, by which injunction the said Keary was enjoined from collecting from said complainants a large sum of money therein specified; and whereas the said J. Hornthall & Co. did pray for and obtain an appeal from
18 said decree, operating as a supersedeas, to the Supreme Court of the United States. Now if the said J. Hornthall & Co. shall prosecute their said appeal with effect, or failing therein shall well and truly pay to said Keary, collector, as aforesaid, the said sum of money in said bill of complaint specified, together with all costs and damages that may be assessed against them, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] J. HORNTHALL.
[SEAL.] ALEX. KUHN.
[SEAL.] JOS. BAYSINSKY.
[SEAL.] M. BODENHEIM.

Signed and acknowledged before me and security approved this
17th July, 1868.
[SEAL.]

LAZ: LINDSEY,
Comm'r U. S. Cir. Court South. Dist. Miss.

This day personally appeared before me Laz. Lindley, commissioner of the Circuit and District Courts of the United States for the southern district of Mississippi, in and for the county of Warren, Jos. Baysinsky and M. Bodenheim, the securities in the foregoing bond, and on their several oaths by me administered, deposed that they are severally worth the penalty of said bond, viz., $6,500, over and above their liabilities and property exempt from
19 execution.

M. BODENHEIM.
JOS. BAYSINSKY.

Sworn to and subscribed this 17th July, 1868.

LAZ. LINDSEY, *Com'r.*

The foregoing bond and sureties are approved.

ROBERT. A. HILL,
U. S. Dist. Judge for Mississippi.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

I, George T. Swann, clerk of the Circuit Court of the United States for said district, hereby certify that the foregoing eighteen and a half pages contain a full, true, and complete transcript of the record, process, proceedings, and final decree of said Circuit Court in the cause therein lately pending, wherein J. Hornthall & Co. were complainants and Martin Keary defendant, as the same remains of record therein.

In testimony whereof I have hereunto set my name and the seal of said court, at Jackson, in said district, this 20th day of July, A. D. 1868.

[SEAL.] GEO. T. SWANN, *Clerk.*

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

JULIUS HORNTHALL AND ALEXANDER KUHN, Partners as HORNTHALL & Co., *Apellants*,
vs.
MARTIN KEARY, *Collector of Int'l Revenue.*
No. 295.

BRIEF OF APPELLEE.

This is a bill in equity in which "Julius Hornthall and Alexander Kuhn, partners in trade in the city of Vicksburg, State of Mississippi, under the firm, name, and style of J. Hornthall & Co.," are complainants, and "Martin Keary, collector of internal revenue of the United States for the second collection district of the State of Mississippi," is respondent; and the prayer is for an injunction to restrain the said Keary, his agents and deputies, from proceeding to enforce the collection of an internal revenue tax assessed on cotton, which tax the respondent threatens to collect by distraint of the complainants' goods, and which the complainants allege is not due. (Printed Transcript, pp. 1 and 6.) In the subpœna (Printed Transcript p. 5) the respondent is described as a citizen of the State of Mississippi, and the complainants are described as citizens of the State

of Mississippi. The injunction was granted on filing a bond, (Printed Transcript, p. 4,) and was dissolved on motion. (Printed Transcript, p. 7.) The respondent demurred to the bill, (Printed Transcript, pp. 7 and 8,) and the bill was dismissed, and the complainants decreed to pay costs, (Printed Transcript, p. 8,) and an appeal was taken to this court.

This tax on the cotton was imposed by section 1 of the act of July 13, 1866, (14 Stat., p. 98,) as amended by the proviso of section 1 of the act of March 2, 1867, (14 Stat., p. 471,) both of which acts are in amendment of the internal revenue act of June 30, 1864, or in addition thereto. Section 68 of chapter 184 of the acts of 1866 (14 Stat., 172) repeals the 50th section of the act of June 30, 1864, and section 67 of chapter 184 of the acts of 1866, (14 Stat. p. 172,) by the first proviso, enacts "that an act entitled 'an act further to provide for the collection of duties on imports,' passed March 2, 1833, shall not be so construed as to apply to cases arising under an act entitled 'an act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' passed June 30, 1864, or any act in addition thereto or in amendment thereof, nor to any case in which the validity or interpretation of said act or acts shall be in issue."

1. It does not appear by the bill that the complainants and respondent are citizens of different States of the United States; but it does appear with sufficient certainty that they are all citizens of the State of Mississippi.

The appeal must therefore be dismissed for want of jurisdiction. (Insurance Company *vs.* Ritchie, 5 Wall., p. 541.)

2. This renders it unnecessary to consider whether any such case is stated as a court of general equity Jurisdiction could take cognizance of, and whether the amendment of section 19 of the internal revenue act of July 13, 1866, found in section 9 of chapter 169, acts of 1867, (14 Stat., p. 475,) in these words, to wit, "and no suit for the purpose of restraining the assessment or collection of tax shall be maintained in any court" does not prohibit a circuit court of the United States from taking cognizance of any such case as is stated in this bill of complaint. That part of the original decree which directs, "that complainants pay the costs of this cause to be taxed, for which execution may issue," is erroneous, because the bill should have been dismissed by the circuit court for want of jurisdiction.

E. R. HOAR.
Attorney General.
W. A. FIELD,
Assistant Attorney General,
Counsel for Appellee.

No. 100 Mr. Jno. Clifford

Stormthal

vs.

Leary, Collector

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1869.

J. HORNTHALL

vs.

MARTIN KEARY, COLLECTOR OF INTERNAL REVENUE.

This case comes up by appeal from the Circuit Court of the United States for the Southern District of Mississippi. The bill was filed in that Court, and prayed for an injunction to restrain the Collector from proceeding to sell property for the tax claimed to be due from the plaintiffs below on cotton owned by them.

It is alleged that the complainants below were the owners of three hundred and forty bales of cotton which they had shipped from Vicksburg, on all of which the taxes had been paid to Keary as collector before shipment, and permits for the shipment of which had been regularly obtained, which permits had been sent forward with the cotton; that they had been notified that the amount of tax ($3,157) was still unpaid, and unless paid within ten days the Collector would proceed to sell their property, the pretence for such sale being that the books of the collector did not show the payment, which it is charged were kept in a loose and irregular manner, and do not exhibit true statements, and that the effort to collect is a fraud upon complainants. It is also charged that Keary has the permits on which the cotton was shipped in his possession.

This is a brief outline of the bill, on which an injunction was granted. The District Attorney moved to dissolve the injunction, which motion was sustained; but the motion to dismiss the bill for want of equity on its face was overruled.

The District Attorney next demurred to the bill, and assigned causes, to wit, that the remedy was before the Commissioner of Internal Revenue; and second, that the Court had no jurisdiction to restrain the collection of internal revenue; which demurrer was sustained, and the complainants appealed.

It is understood that this case was decided on acts of Congress which the Court construed as prohibitory of any suit whatever

against a collector. This was a total misapprehension of the law. The Commissioner of Internal Revenue is by one act authorized to settle certain questions in regard to the collection of revenue. By the act of the first session of 1866, 14 Statutes at Large, 98, sec. 9, the assessors are authorized to hear and determine appeals taken by parties who feel aggrieved by the assessment. But he must give notice of the time when and the place where he will hear such appeals. No such notice was set up in this case, and without it, there was no opportunity to have the assessment corrected but in a court of law or equity. But none of these statutes apply to this case; there is no dispute about the assessment or the payment of the tax; the only question is, can a party be compelled to pay taxes twice. The demurrer admits that they had been paid once. All the remedies, however, prescribed by the statutes are but cumulative, and do not deprive a party of his remedy by due course of law; that cannot be done. And that provision of the act of the second session of 1866, which provides that "no suit for the purpose of restraining the assessment or collection of tax shall be maintained in any court," besides being simply absurd, has no application in this case. This suit was not brought to restrain either the assessment or collection of tax, but it is brought to restrain the collection a second time. No tax is due, because it had been paid, which the demurrer admits.

But the Attorney General says in his printed argument that the Court had not jurisdiction, because, as is said, the respondent is described as a citizen of the State of Mississippi, and the complainants as citizens of the State of Mississippi. This is not exactly accurate; the respondent is not named in the bill as a citizen of Mississippi, but is sued in his official capacity, without naming his residence. He is sued as an officer of the United States, and had a right to have the suit transferred to the United States court. The process was served on his deputy, and it does not appear that Keary is a citizen of Mississippi. But has not the Federal Judiciary jurisdiction in all revenue cases? It is supposed the counsel below acted on this presumption. Without extended argument on this subject, which is far more familiar to the Court than it is to the counsel, the case is respectfully submitted.

W. L. SHARKEY,
For Appellant.